LIBRARY
SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

Supreme Court, U.S.
FILED
FEB 25 1971
E. ROBERT SEAVER, CLERK

October Term, 1970

No. .....

~~1392~~

ROYGENE ROBINSON, *et al.*,

Respondents,

vs.

THE LOS ANGELES POLICE DEPARTMENT, *et al.*,

Petitioners.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

ROGER ARNEBERGH,
City Attorney,
GEORGE J. FRANSCELL,
Assistant City Attorney,
2102 City Hall,
Los Angeles, Calif. 90012,
(213) 485-3644,
Attorneys for Petitioners.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

SUBJECT INDEX

Page

Citations to Opinion Below 1

Jurisdiction 1

Question Presented 2

Constitutional and Statutory Provisions Involved .. 2

Statement of Proceedings 2

Reasons for Granting the Writ 4

No Cause of Action Was Stated Against the Board of Police Commissioners of the City of Los Angeles and Against Its Individual Members. Therefore, to Refuse to Dismiss Them From This Action Denies Them Due Process and Equal Protection Under the Fifth and Fourteenth Amendments of the Constitution 4

Facts 4

Argument 6

Conclusion 10

INDEX TO APPENDICIES

Page

Appendix A. Judgment 1

Opinion of the United States Court of Appeals for the Ninth Circuit 2

Appendix B. Federal Rules of Civil Procedure Involved 3

Appendix C. Pertient California Government Code Sections Involved 5

Appendix D. City Charter of Los Angeles, Article XIX, Section 202 8

TABLE OF AUTHORITIES CITED

Cases	Page
Farmer v. Roundtree, 149 F. Supp. 327, aff'd 252 F. 2d 490, cert. denied, 357 U.S. 926, Reh. den. 358 U.S. 858	8
Klim v. U.S., 177 U.S. 290	8

Rules	
California Rules of Court, Rule 12(b)(6)	9
Federal Rules of Civil Procedure, Rule 23(a)	2, 3, 6

Statutes	
California Government Code, Sec. 54951	2, 7, 9
California Government Code, Sec. 54952	2, 8, 9
California Government Code, Sec. 54952.5	2, 8, 9
California Government Code, Sec. 54957	2, 7, 9
Los Angeles City Charter, Art. XIX, Sec. 202	2, 8
United States Code, Annotated, Title 42, Sec. 1981	6
United States Code Annotated, Title 42, Sec. 1983	6, 7
United States Code Annotated, Title 42, Sec. 1985	6, 7
United States Code Annotated, Title 42, Sec. 1986	6, 7
United States Code Annotated, Title 42, Sec. 1988	6, 7
United States Code, Title 28, Sec. 1254	1
United States Constitution, Fifth Amendment	2
United States Constitution, Fourteenth Amendment	2, 3, 6

Page

Federal Rules of Civil Procedure, Rule 23(a) (2) 6

Federal Rules of Civil Procedure, Rule 23(a) (3) 6

Federal Rules of Civil Procedure, Rule 23(b)(2) 2, 3, 6

IN THE

Supreme Court of the United States

October Term, 1970
No. .....

ROYGENE ROBINSON, *et al.*,

Respondents,

vs.

THE LOS ANGELES POLICE DEPARTMENT, *et al.*,

Petitioners.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above-entitled case on January 15, 1971.

Citations to Opinion Below.

The opinion and judgment of the United States Court of Appeals for the Ninth Circuit is attached hereto, marked Appendix A, and incorporated herein as if fully set forth which bears No. CA. 24088.

Jurisdiction.

Jurisdiction is conferred by Title 28, Section 1254, United States Code, which provides in part as follows:

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon a petition of any party to any civil or criminal case, before or after rendition of judgment or decree. . . ."

Question Presented.

Has the United States Court of Appeals for the Ninth Circuit deprived the Los Angeles Police Commissioners of due process and equal protection of the law by refusing to dismiss them from this action despite the lack of a stated cause of action against them.

Constitutional and Statutory Provisions Involved.

The pertinent provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States, Rule 23(a), (b)(2) of the Federal Rules of Civil Procedure (Appendix B), provisions of Sections 54957, 54951, 54952 and 54952.5 of the Government Code of California (Appendix C), and Article XIX, Section 202 of the City Charter of the City of Los Angeles (Appendix D).

Statement of Proceedings.

Respondent filed complaint No. 68-1763-R in the United States District Court for the Central District of California. The first amended complaint alleges that (a) the plaintiffs (respondents) are all black citizens of the United States and all residents of the City and/or County of Los Angeles [C.T. p. 56, lines 27-29]; (b) their individual affiliations, if any, with various groups or organizations, including the Black Panther Party, US, Los Angeles Black Congress, Freedom Draft Com-

mittee, Venice Organizers and SNCC (Student Nonviolent Coordinating Committee), which are organizations of black people [C.T. p. 56, line 30, to p. 57, line 28, p. 59, lines 4-6]; (c) Defendants Reddin (the then Chief of Police), named Police Officers and the Los Angeles Police Department have over a long period of time subjected and are continuing to subject the Plaintiffs (Respondents), their class and their organizations to a systematic pattern of conduct and custom [C.T. p. 59, lines 7-20] because of their race [C.T. p. 69, lines 15-23] and affiliations with black organizations [C.T. p. 69, lines 24-30]; (d) and Plaintiffs (Respondents) bring the suit as a "Class Action" under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure for themselves and others similarly situated as blacks [C.T. p. 58, lines 4-9]. The District Court dismissed the action as to the City Council of the City of Los Angeles and its individual members and the Board of Police Commissioners of the City of Los Angeles and its individual members.

Respondent appealed to the United States Court of Appeals for the Ninth Circuit. On January 15, 1971, the dismissal of the Los Angeles City Council was affirmed, and the dismissal of the Board of Police Commissioners of the City of Los Angeles was reversed (Written Opinion, see Appendix A).

REASONS FOR GRANTING THE WRIT.

To prevent a miscarriage of justice it is necessary to reverse that portion of the decision of the United States Court of Appeals for the Ninth Circuit which includes the Board of Police Commissioners and its individual members in this action. It is further necessary to reinstate the correct decision of the United States District Court.

No Cause of Action Was Stated Against the Board of Police Commissioners of the City of Los Angeles and Against Its Individual Members. Therefore, to Refuse to Dismiss Them From This Action Denies Them Due Process and Equal Protection Under the Fifth and Fourteenth Amendments of the Constitution.

Facts.

In paragraph IV of the first amended complaint, the Board of Police Commissioners is alleged to be the agency that heads and is responsible for the operation of the Police Department. Thereafter, the Board of Police Commissioners is taken to task for refusing to hold public hearings on personnel complaints and disciplinary proceedings. It is specifically claimed that the Board of Police Commissioners has never granted open and public hearings, though requested, and that the complaining parties have not had an opportunity to be heard and to appear (paragraph 48). There are no allegations or claims in the first amended complaint or any of the other papers and pleadings of the respondents which disclose that the above complaint of procedures of the Board of Police Commissioners are car-

ried out with respect only to the respondents of their class and are not employed as to all personnel complaints whether from persons who are white, yellow, red or any admixture thereof.

Concluding all the above allegations, respondents finally state in their prayer exactly what their complaint is against the Board of Police Commissioners, and the Commissioners individually. Said complaint is the failure to hold open hearings and investigations of personnel complaints. Respondents state that they want the Court to order such hearings be held [C.T. p. 89, lines 1-18]. This position was likewise stated as the sole basis for jurisdiction during argument by respondent during the petitioners' motion to dismiss. *In other words the sole basis for suit is the failure of the Police Commission to conduct public hearings on alleged police misconduct.*

ARGUMENT.

Respondents brought a Class Action against petitioners under the Civil Rights Statutes (42 USCA 1981, 1983, 1985, 1986 and 1988) and Rule 23(a) and (b) (2) of the Federal Rules of Civil Procedure alleging that certain defendants, *not the petitioners herein,* employ a systematic pattern of conduct against respondents and members of their class because of their race (negro) to which such defendants do not subject white citizens [C.T. p. 7, lines 19-27]. The only similarity between the respondents and the class they purportedly represent is their race. This similarity is the only way in which they satisfy Rule 23(a) (2), (3), and (b) (2).

As to petitioners herein, the Class aspect of the complaint fails to allege in any way that some act or refusal to act existed against respondents because of their class. In fact respondents allege that petitioner Board of Police Commissioners follow the same procedure with reference to all complaints [C.T. p. 82, line 25, to p. 83, line 4].

In the absence of alleging that they are singled out by petitioners for certain treatment, the Class Nature of the respondents' action fails to exist. Surely, respondents in light of their allegations do not now purport to represent all persons who have made personnel complaints against police officers of the City of Los Angeles. Having chosen to bring a Class Action based upon race alone they must abide by it. Their allegations in Paragraphs 9 and 10 [C.T. p. 58, line 16, to p. 59, line 3] state that,

> ". . . by reason of their race and ethnic affiliation, and national origin [they] have not enjoyed

> full and equal participation in the political, social, and economic affairs of the City and County of Los Angeles . . . [and] have organized, associated with and/or become members of, ... community organizations of blacks in the City of Los Angeles. [And] [t]the purposes of these organizations are to eliminate prejudice and discrimination . . ."

If there is any further question regarding the intent of the respondents' action it is laid to rest by statement of their counsel at the hearing of January 6, 1969, wherein he stated,

> "The Complaint alleges, your Honor, the purpose and effect of the conduct described was specifically to intimidate plaintiffs with respect to the exercise of these rights and specifically because plaintiffs' race and membership in those organizations." [R.T. p. 5, lines 7-12].

Again, the sole basis for inclusion of the Board of Police Commissioners and its individual members is to require said Board to have public hearings on all complaints of police misconduct.

Likewise, the respondents have failed to disclose any authority for the proposition that the refusal or failure to provide public hearings on personnel matters is a basis for claiming denial of some constitutionally protected right under Sections 1983, 1985, 1986 and 1988 of 42 USCA upon which respondents rely for their action.

The right to have public hearings provided on personnel matters is not a Constitutionally protected right. California Government Code Sections 54957, 54951,

54952 and 54952.5 specifically permit non-public hearings to consider complaints on charges brought against public employees or officers. Further, and most important, Article XIX, Section 202 of the City Charter of Los Angeles empowers the Chif of Police, not the Police Commission, to handle Police Department personnel matters. Therefore, public hearings held by the Board of Police Commissioners, as referred to in the respondents' first amended complaint, may be prohibited by the existence of Section 202. To conduct such hearings would be an idle act.

It is a long established rule that the Courts have no general supervisory power over the executive or administrative branches of government, *Klim v. U.S.*, 177 U.S. 290. The Courts are constituted to adjudicate cases and controversies properly coming within the judicial sphere of action, and they have no right or authority to resolve political or governmental policy entrusted to executive and legislative departments.

> *Farmer v. Roundtree,* 149 F. Supp. 327, Affirmed: 252 F. 2d 490, cert. denied: 357 U.S. 906, Rehearing denied: 358 U.S. 858.

As alluded to by the District Court [R.T. p. 9, line 10, to p. 10, line 1] there is a serious question as to whether that Court has jurisdiction over the matter of the lack of public hearings which is the complaint of the respondents. Absent any Constitutional right to have a public hearing other than in a Court of law, there is no basis for compelling or complaining about the absence of any such proceedings.

Whether or not the Board of Police Commissioners or City Council of the City of Los Angeles holds public hearings is a matter of discretion to be exercised by

those bodies alone. In fact the California State Legislature has provided in Government Code Section 54957 that the legislative body of a local agency which includes permanent boards or commissions of a local agency (Government Code Sections 54951, 54952, 54952.5) may hold executive sessions to consider the appointment, employment or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee and only the officer or employee may request a public hearing. Further, witnesses may be excluded from such sessions.

For the Court, regardless of its good intentions, to interfere with the legislative process is to permit meddling in a political question and a matter of legislative policy and discretion which has been exercised. To compel as is desired by respondents public hearings would also be violative of the rights of the individual as prescribed by the State Legislature. Respondents fail to see and appreciate the existence of any rights of the accused public employee.

Defendant Police Commissioners have no powers or duties under the Municipal Code of Los Angeles to conduct open or public hearings on personnel matters. There is no claim that such practice is limited to respondents or their purported Class. Therefore, respondents have not, and cannot, claim that failure to hold public hearings purposefully or actually denies them equal protection of the laws, or equal privileges or immunities under the laws.

Under Rule 12(b)(6) failure to state a claim upon which relief can be granted results in a dismissal of affected defendants. It is a clear violation of due process and a denial of equal protection of the law to refuse to dismiss defendant Board of Police Commissioners and

its individual members in a situation in which individuals who are not Police Commissioners would be granted a dismissal.

Conclusion.

The United States District Court for the Central District of California dismissed defendants who at the time of the dismissal were the Board and individual members of the Board of Police Commissioners for the Los Angeles Police Department. In reversing this dismissal, despite the failure to state a claim upon which relief could be granted, the United States Court of Appeals for the Ninth Circuit deprived these said defendants of due process of law and equal protection of the law.

Therefore, the decision of the United States Court of Appeals for the Ninth Circuit is clearly erroneous. For this reason, the petition for writ of certiorari should be granted.

Respectfully submitted,

ROGER ARNEBERGH,
City Attorney,

GEORGE J. FRANSCELL,
Assistant City Attorney,

Attorneys for Petitioners.

APPENDIX A.

Judgment.

Office of the Clerk
United States Court of Appeals
for the Ninth Circuit
U. S. Court of Appeals and Post Office Building
7th & Mission Streets, P. O. Box 547
San Francisco, California 94101
Jan. 15, 1971

Re: No. 24088, Roygene Robinson, et al. v. The Los Angeles Police Department, et al.

Dear Sir:

An opinion in the above case was filed today, and pursuant to Rule 36 of the Federal Rules of Appellate Procedure a judgment was entered affirming in part and remanding the judgment or order of the court below (or administrative agency). You have 14 days from this date to file a petition for rehearing if you wish to do so.

Pursuant to Rule 41(a) the mandate of this court will issue 21 days after the entry of judgment, unless the court enters an order otherwise, or grants a stay of the mandate or a petition for rehearing is filed. If a petition for rehearing is filed and denied, the mandate shall issue 7 days after the entry of the order denying the petition.

Very truly yours,
Wm. B. Luck,
Clerk of Court

Docketed Jan. 25, 1971.

Opinion of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals, for the Ninth Circuit.

Roygene Robinson, et al., *Plaintiffs-Appellants,* v. The Los Angeles Police Department, et al., *Appellees.* No. 24,088.

[January 15, 1971]

On Appeal from the United States District Court for the Central District of California

Before: CHAMBERS, ELY and KILKENNY, Circuit Judges.

PER CURIAM:

Under our liberal notice pleading today, we think it would have been more appropriate to keep the Police Commissioners in the action until at least the plaintiffs presented their factual case. No indication is given as to what ultimate decision should be made on the merits.

As to the members of the Los Angeles City Council, we can find no basis for keeping them in the case. As to the Council members, we affirm the dismissal.

Remanded for proceedings consistent herewith.

* * * * *

Judge Ely would also reverse as to the members of the Council because of his belief that there is now an inadequate factual record on which to make a dispositive decision as to the members of the Council.

Judge Kilkenny would affirm the decision as made.

APPENDIX B.

Rule 23. Class actions.

(a) *Prerequisites to a class action.* One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) *Class actions maintainable.* An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests, or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) *Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions.*

(1) As soon as practicable after the commencement of action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b) (3), the court shall direct to the members of the class the best notice paracticable under the circumstances, including. . . .

APPENDIX C.

§ *54957. Executive sessions; exclusion of witnesses.* Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding executive sessions during a regular or special meeting to consider the appointment, employment or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee by another public officer, person or employee unless such officer or employee requests a public hearing. The legislative body also may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

Nothing in this chapter shall be construed to prevent any board, commission, committee, or other body organized and operated by any private organization as defined in Section 54952 from holding executive sessions to consider (a) matters affecting the national security, or (b) the appointment, employment or dismissal of an officer or employee or to hear complaints or charges brought against such officer or employee by another officer, person, or employee unless such officer or employee requests a public hearing. Said body also may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body. (Added Stats. 1953, c. 1588, p. 3271, § 1, as amended Stats. 1957, c. 1314, p. 2633, § 1;

Stats. 1959, c. 647, p. 2626, § 2; Stats. 1961, c. 1671, p. 3637, § 4.)

§ *54951. Local agency, definition.* As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency. (Added Stats. 1953, c. 1588, p. 3270, § 1, as amended Stats. 1959, c. 1417, p. 3696, § 1.)

§ *54952. Legislative body, definition.* As used in this chapter, "legislative body" means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation. (Added Stats. 1953, c. 1588, p. 3270, § 1, as amended Stats. 1961, c. 1671, p. 3637, § 1.)

Notes of Decisions

1. *Board or commission*

"Any board or commission" within Brown Act definition of a legislative body whose meetings should be public, means any board or commission of the governing body, and not a subordinate agency such as a zoning commission, acting independently of the governing

body and pursuant to authority flowing directly from the charter. Adler v. City Council of City of Culver City (1960) 7 Cal.Rptr. 805, 184 C.A.2d 763.

§ *54952.5 Legislative body as including permanent boards or commissions of local agencies.* As used in this chapter "legislative body" also includes, but is not limited to, planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency. (Added Stats. 1961, c. 1671, p. 3637, § 1.)

APPENDIX D.

Sec. 202. (1) The right of an officer or employee of the Police Department to hold his office or position and to the compensation attached to such office or position is hereby declared to be a substantial property right of which he shall not be deprived arbitrarily or summarily, nor otherwise than as herein in this section provided. No officer or employee of the Police Department shall be suspended, removed, deprived of his office or position, or otherwise separated from the service of the Police Department (other than by resignation), except for good and sufficient cause shown upon a finding of "guilty"of the specific charge or charges assigned as cause or causes therefor after a full, fair and impartial hearing before the Board of Rights (except as otherwise specifically provided in paragraphs two (2) and seven (7) of this section). Such charges must be based upon some act committed or omitted by such officer or employee within one (1) year prior to the filing of the complaint referred to herein. No case of suspension with loss of pay shall be for a period exceeding six (6) months.

(2) Provided, however, that the Chief of Police may:

(a) Temporarily relieve from duty any officer or employee of the Police Department pending a hearing before and decision by the Board of Rights of any charge or charges pending against such officer or employee; or he may

(b) Suspend such officer or employee for a total period not to exceed thirty (30) days with loss of pay and with or without reprimand, subject, however, to the right of such officer or employee to a hearing before a

Board of Rights. In the event the officer or employee suspended under this subparagraph files his application with the Chief of Police (within five (5) days after service upon him of notice of such suspension if he has been personally served or within ten (10) days if he has been served in any other manner as herein prescribed), for a hearing before and decision by a Board of Rights in the manner in this section provided, such suspension shall thereupon automatically become a temporary relief from duty pending hearing and decision by the Board of Rights. In the event, however, that such officer or employee so suspended under subparagraph (b) of paragraph two (2) hereof, fails to so apply for such hearing within the period prescribed, he shall be deemed to have waived such hearing and such suspension shall remain effective, unless the Chief of Police require that a hearing be had, as hereinafter provided.

(3) In the event any order of relief from duty or order of suspension is made under either subparagraphs (a) or (b) of paragraph two (2), such order must contain a statement of the charges assigned as causes therefor, and the Chief of Police must (within five (5) days after such order of relief from duty or order of suspension is served as in this section prescribed) file with the Board of Police Commissioners a copy of a verified written complaint upon which such order of relief from duty or order of suspension is based, with a statement that a copy of such order of relief from duty or order of suspension and copy of verified complaint was served upon the accused. Such complaint must be verified by the oath of the person making the same and must contain a statement in clear and concise language of all the facts constituting the charge made. In

the event that the Chief of Police fails to file the aforesaid statement and complaint within the five (5) day period heretofore prescribed, the aforesaid order of temporary relief from duty or order of suspension shall thereupon become void and of no effect and shall be automatically revoked, and the accused officer or employee restored to duty with the department without loss of pay and without prejudice, the same as if no order of relief from duty or order of suspension had been made.

(4) The service of any notice, order or process mentioned in this section, other than service of subpoena, may be made either by handling the officer or employee a copy thereof personally or by forwarding such copy by registered mail to his last known address of record with the Police Department if after due diligence he cannot be found.

(5) Within five days after service upon him of copy of the aforesaid verified complaint if he had been personally served or within ten (10) days after service upon him of copy of the aforesaid verified complaint if he has been served in any other manner as herein prescribed, the accused officer or employee may file with the Chief of Police his written application for a hearing before and decision by a Board of Rights.

(6) The Board of Rights shall be constituted of three (3) officers of the rank of captain or higher. Upon the filing of the request for hearing before a Board of Rights as hereinabove provided, the officer or employee shall draw six (6) cards from a box containing the names of all of the officers who are qualified to sit upon such board (except the names of the accused, the accuser, the Chief of Police and the Assistant Chief of Police, and such other officer as may

be otherwise prejudiced or otherwise disqualified by reason of being a material witness to the facts constituting the charges made), and shall select any three (3) of the six (6) names thus drawn to constitute the Board of Rights to hear and decide upon the charges against him, rejecting the three (3) not selected by replacing them in the box. The three (3) thus selected shall constitute the Board of Rights to hear and decide the matter.

(7) In the event the accused fails, in any case, to request a hearing before a Board of Rights as hereinabove provided within the period prescribed, the Chief of Police may require a hearing to be had before a Board of Rights and may for that purpose, within five (5) days, after the expiration of such period, draw three (3) names from such box to constitute such board. Provided, however, that in any case where such Board of Rights has been constituted for the purpose of hearing as herein in this section provided and the accused, without reasonable excuse, fails, neglects or refuses to appear before the said Board of Rights in session for such trial or hearing at the time and place designated, the Chief of Police may, at his discretion either direct the Board of Rights to proceed with such trial or hearing in the absence of such accused, or he may, without such hearing, impose such penalty of suspension or removal as he deems fit and proper, and cause notice thereof to be served upon such officer or employee so suspended or removed in the manner herein prescribed, and file a statement of such action with the Board of Police Commissioners within five (5) days thereafter; and, provided further, however, that in the event the accused and Chief of Police both fail to draw and create such Board of Rights within the period pre-

scribed in any case of temporary relief from duty pending hearing, then and in that event such temporary relief from duty shall be null and void and of no effect the same as if it had not been made.

(8) Upon the selection of the officers to constitute the Board of Rights, the said Chief of Police shall appoint the time (not less than five (5) nor more than ten (10) days thereafter) and designate a place where such hearing is to be held, and shall cause notice thereof to be served upon accused in the manner herein prescribed.

The Board of Rights may at any stage of the proceedings (after it has first met in session at the time and place designated) continue from time to time the hearing of the matter pending before them.

(9) The officers so selected as herein prescribed shall constitute the Board of Rights (for the purpose of hearing and deciding upon the matter for which it was specially drawn) and shall have the power to administer oaths and affirmations in any investigation or proceeding pending before said board, examine witnesses under oath, and compel the attendance of witnesses and the production of evidence before them, respectively, as the case may be, by subpoena to be issued in the name of the City of Los Angeles, and to be attested by the City Clerk of said city.

(10) The City Clerk shall, upon demand of the officers constituting the said Board of Rights, issue such subpoena in the name of the city, and attest the same with the corporate seal thereof, and shall in such subpoena direct and require the attendance of the witnesses sought to be subpoenaed before the said board, at the time and place in said subpoena specified; and it

shall be the duty of the Chief of Police to cause all such subpoenas to be served by some member of the Police Department upon the person or persons required to attend as aforesaid; and it shall be the duty of the Council upon the adoption of this charter amendment to provide suitable penalties for disobedience of such subpoenas, and the refusal of witnesses to testify as herein provided.

(11) The City Attorney (or some duly authorized deputy) shall, upon request of the Board of Rights, sit with said Board of Rights during its session or hearing for the purpose of advising the said board on any and all legal matters pertaining to this section.

(12) At such hearing the accused shall have the right to appear in person and by counsel or representatives, or both, and make defense to such charge and may produce witnesses to testify in his behalf and cross-examine witnesses against him. The accused shall have the right and privilege to select and name any officer of the department of any rank not higher than the rank of Lieutenant (who is not otherwise disqualified by reason of prejudice or being a party to the action in any capacity) to act as his defense representative at such hearing. The Chief of Police must immediately assign the officer so selected and named to act as such representative, and it is hereby made the duty of such officer to use every legal means available and exercise the best efforts of which he is capable to defend the accused at such hearing. All testimony at such hearing shall be given under oath, reported by a stenographer and transcribed and the accused shall be entitled to a certified copy of such transcript without charge or payment of fee. The said Board of Rights shall, at the conclusion of the hearing, make its specific

findings of "guilty" or "not guilty" (on each specific charge) which must be based upon the evidence adduced before it at such hearing and not otherwise and render and certify its decision in writing. If the accused is found "not guilty," said board shall order his restoration to duty without loss of pay and without prejudice, and such order shall be self-executing and immediately effective. In case, however, that the accused is found "guilty," the said Board of Rights shall prescribe its penalty (by order in writing) of either suspension for a definite period not exceeding six (6) months with total loss of pay, and with or without reprimand; or reprimand without further penalty; or of removal from office or position; which decision and order must be certified in writing and a copy thereof immediately delivered to the Chief of Police. The departmental personal history and records of the accused shall not be available to the Board of Rights except and only in such cases where the accused has been found guilty of any charge upon which he was heard or tried by the Board of Rights, then only for the purpose of determining a proper penalty to be prescribed; provided, however, that in prescribing such penalty the said board must look to the nature and gravity of the offense of which the accused has been found guilty and may at its discretion review the departmental personal history and record of such accused; provided further, however, that no item or entry in such record may be considered by the said board except in the presence of the accused, nor unless such accused has been given a fair and reasonable opportunity to explain any such item or entry.

(13) The Chief of Police shall thereafter execute the order of the Board of Rights within five (5) days

after delivery to him of such certified copy of decision and order, or, he may within five (5) days at his discretion and in lieu of such order, impose a penalty upon such officer or employee less in severity than that ordered by the Board of Rights, but may not impose a great penalty. In the case of a suspension or removal, the Chief of Police shall cause a copy of his notice of suspension or removal (based upon the order of the Board of Rights or upon his modification thereof) to be served upon such officer or employee and shall file a statement of such action with the Board of Police Commissioners with five (5) days thereafter.

(14) In any case of penal suspension or removal prescribed by the Board of Rights (or by the Chief of Police in case no hearing is had before a Board of Rights) the time of such suspension shall be computed from the first day such officer or employee was so suspended or relieved from duty pending hearing before and decision by the Board of Rights, and such removal shall relate back to and be effective as of the date of such relief from duty pending hearing before and decision by the Board of Rights.

(15) No officer or employee of the Police Department shall be twice tried for the same offense, except upon his request. In any case of exoneration of the accused after a hearing before the Board of Rights, such exoneration shall be without prejudice to such officer or employee.

(16) At any time within three (3) years after any case of removal as hereinabove provided, the officer or employee so removed may file his request with the Chief of Police to be reheard or to be heard on the cause of his removal, together with his supporting affi-

davit specifically setting forth in clear and concise language the reasons or grounds therefor. The Chief of Police must consider and decide upon such request and affidavit within thirty (30) days after such filing. If good reason or cause appears therefor, the Chief of Police must, without unnecessary delay, cause a Board of Rights to be constituted in the manner hereinabove provided for the purpose of hearing and deciding upon the matter. The said Board of Rights shall proceed as hereinabove prescribed, and shall at the conclusion of the hearing render and certify its findings (independent of any previous findings by any other Board of Rights, or any other court, board or other tribunal, or any investigation or report of or discretion exercised by the Chief of Police in such cases where no hearing was had before a Board of Rights), based upon the evidence adduced before it at such hearing and not otherwise; and shall make and certify its decision and order in writing, and shall deliver a copy thereof to Chief of Police. The Chief of Police shall thereupon proceed in the same manner as is hereinabove provided for after decision by the Board of Rights.

(17) If, as and when the Board of Police Commissioners herein referred to should become abolished, then, and in that event, wherever in this section the Board of Police Commissioners is named or referred to there shall be read into this section in place thereof, the name of the officer, board or other body created in its place to assume the functions, powers and duties of such Board of Police Commissioners; or, in the absence of such specific provision, then there shall be read into this section the name of the officer, board or body to whom such power or duties may be delegated, or who shall assume such powers or duties.

(18) This section shall not be construed to in any way affect any other rights any officer or employee may have to pursue or assert any and all other legal rights or remedies in relation to his office or position or to the compensations attached thereto, or to appeal to or be heard or tried by or before any court or other tribunal of competent jurisdiction, whether such court or other tribunal now exists or may be hereafter created or established.

(19) Any person restored to duty or reinstated in his office or position after suspension or removal, as provided in and under any provision of this section, shall be entitled to receive full compensation from the city the same as if such compensation or removal had not been made, provided that such compensation shall not be for more than six (6) months salary. [Amended, 1935.]